

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
JULY 23 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0065-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
RAFAEL MARISCAL CARDENAS,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20064242

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Rafael M. Cardenas

Buckeye
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 A jury found petitioner Rafael Cardenas guilty of second-degree burglary and theft by control of property worth \$4,000 or more. After finding Cardenas had committed these offenses while on release from confinement and had two historical prior felony convictions, the trial court sentenced him to two enhanced, presumptive terms of 11.25 years' imprisonment, to be served concurrently. We affirmed his convictions and sentences on

appeal. *State v. Cardenas*, No. 2 CA-CR 2007-0187 (memorandum decision filed Mar. 10, 2008).

¶2 Cardenas filed a timely notice of post-conviction relief and, in a supplemental pro se petition that followed, alleged the trial court had erred in enhancing his sentence based on his having two historical prior felony convictions. According to Cardenas, he had only one prior felony conviction pursuant to former A.R.S. § 13-604(M), which provided: “Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for the purposes of [§ 13-604 enhancement].”¹ Cardenas maintained § 13-604(M) applied to his prior convictions because they “were resolved at the same time, and on the same occasion.” He further argued his trial counsel had been ineffective for failing to raise this alleged error below.

¶3 The trial court denied relief, explaining that, although Cardenas’s prior convictions had been consolidated for sentencing and thus resolved on the same occasion, § 13-604(M) applied only to offenses committed on the same occasion. The court then found Cardenas had failed to establish the two prior offenses had been committed on the same occasion, noting they had taken place approximately thirteen days apart and did not involve “continuous and uninterrupted” conduct or the same or related victims. Having found Cardenas’s claim of sentencing error without merit, the court further concluded Cardenas’s

¹The provisions of Arizona’s criminal code were revised and renumbered effective January 1, 2009, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, and the provisions relevant to Cardenas’s argument are now found in A.R.S. § 13-703(C) and (L). We refer in this decision to the statutes as cited in Cardenas’s petitions and the trial court’s order denying relief.

counsel had not been deficient in failing to allege sentencing error below and, in any event, Cardenas had not been prejudiced by counsel's omissions. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to prevail on ineffective assistance of counsel claim, defendant must establish both deficient performance and prejudice); *State v. Nash*, 143 Ariz. 392, 397-98, 694 P.2d 222, 227-28 (1985) (same).

¶4 Cardenas's petition for review adds nothing substantive to the petition for post-conviction relief he filed below. We will not disturb a trial court's denial of post-conviction relief unless we find the court abused its discretion. *State v. Mata*, 185 Ariz. 319, 331, 916 P.2d 1035, 1047 (1996). We find no abuse of discretion here. Moreover, because the court clearly identified, thoroughly analyzed, and correctly resolved Cardenas's claims, we need not repeat its analysis. We therefore adopt the court's order. *See generally State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Although we grant the petition for review, we deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge